

EX PARTE OR LATE FILED

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1615 L STREET, NW  
WASHINGTON, DC 20036-5694  
TELEPHONE (202) 223-7300  
FACSIMILE (202) 223-7420

LLOYD K. GARRISON (1946-1991)  
RANDOLPH E. PAUL (1946-1956)  
SIMON H. RIFKIND (1950-1995)  
LOUIS S. WEISS (1927-1950)  
JOHN F. WHARTON (1927-1977)

1285 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019-6064  
TELEPHONE (212) 373-3000  
FACSIMILE (212) 757-3990

62, RUE DU FAUBOURG SAINT-HONORÉ  
75008 PARIS, FRANCE  
TELEPHONE (33 1) 53 43 14 14  
FACSIMILE (33 1) 53 43 00 23

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2-CHOME  
CHIYODA-KU, TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101  
FACSIMILE (81-3) 3597-8120

ORIENTAL PLAZA, TOWER E3  
SUITE 1205  
NO.1 EAST CHANG AN AVENUE  
DONG CHENG DISTRICT  
BEIJING, 100738  
PEOPLE'S REPUBLIC OF CHINA  
TELEPHONE (86-10) 8518-2766  
FACSIMILE (86-10) 8518-2760/61

12TH FLOOR, HONG KONG CLUB BUILDING  
3A CHATER ROAD, CENTRAL  
HONG KONG  
TELEPHONE (852) 2536-9933  
FACSIMILE (852) 2536-9622

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU, U.K.  
TELEPHONE (44 20) 7367 1600  
FACSIMILE (44 20) 7367 1650

PARTNERS RESIDENT IN WASHINGTON  
HENK BRANDS  
PATRICK S. CAMPBELL  
KENNETH A. GALLO  
ROBERT P. PARKER  
WARREN B. RUDMAN, OF COUNSEL

PARTNERS NOT RESIDENT IN WASHINGTON

NEALE M. ALBERT\*  
MARK H. ALCOTT  
ALLAN J. ARFFA\*  
ROBERT A. ATKINS\*  
JOHN F. BAUGHMAN\*  
LYNN B. BAYARD\*  
DANIEL J. BELLER  
MITCHELL L. BERG\*  
MARK S. BERGMAN  
BRUCE BIRENBOIM\*  
H. CHRISTOPHER BOEHNING\*  
RICHARD S. BORISOFF\*  
JOHN F. BREGLIO\*  
RICHARD J. BRONSTEIN\*  
JEANETTE K. CHAN\*  
YVONNE Y.F. CHAN\*  
DOUGLAS A. CIFU\*  
LEWIS R. CLAYTON  
JAY COHEN  
RUSSELL E. COLWELL\*  
KELLEY A. CORNISH\*  
DOUGLAS R. DAVIS\*  
JAMES M. DUBIN  
LESLIE GORDON FAGEN  
MARC FALCONE\*  
PETER L. FELCHER\*  
PETER E. FISCH\*  
ROBERT C. FLEDER\*  
MARTIN FLUMENBAUM  
ANDREW J. FOLEY\*  
HARRIS B. FREIDUS\*  
MICHAEL E. GERTZMAN\*  
PAUL D. GINSBERG\*  
ERIC S. GOLDSTEIN\*  
ERIC GOODISON\*  
CHARLES H. GOOGE, JR.\*  
ANDREW G. GORDON\*  
BRUCE A. GUTENPLAN\*  
GAINES GWATHMEY, III\*  
ALAN S. HALPERIN\*  
CLAUDIA HAMMERMAN\*  
GERARD E. HARPER  
ROBERT M. HIRSH\*  
STEVEN R. HOWARD\*  
JOYCE S. HUANG\*  
JEH CHARLES JOHNSON  
MEREDITH J. KANE\*  
ROBERTA A. KAPLAN\*  
BRAD S. KARP\*  
JOHN C. KENNEDY\*  
ALAN W. KORNBERG

DALE M. SARRO  
JOSEPH J. SIMONS  
PHILLIP L. SPECTOR  
STUART G. STEINGOLD  
RUBEN KRAIEM\*  
DANIEL J. KRAMER\*  
DAVID K. LAKHDHIR  
JOHN E. LANGE  
DANIEL J. LEFFELL\*  
MARTIN LONDON  
JEFFREY D. MARELL\*  
MARCO V. MASOTTI\*  
EDWIN S. MAYNARD\*  
TOBY S. MYERSON\*  
JOHN E. NATHAN\*  
KEVIN J. O'BRIEN\*  
ALEX YOUNG K. OH\*  
JOHN J. O'NEIL  
KELLEY D. PARKER\*  
MARC E. PERLMUTTER\*  
MARK F. POMERANTZ\*  
VALERIE E. RADWANER\*  
CAREY R. RAMOS  
MICHAEL B. REEDE\*  
CARL L. REISNER\*  
WALTER RIEMAN\*  
SIDNEY S. ROSENBERGER\*  
RICHARD A. ROSEN\*  
ANDREW N. ROSENBERG\*  
STEVEN B. ROSENFELD  
PETER J. ROTHENBERG\*  
RAPHAEL M. RUSSO\*  
JEFFREY D. SAFERSTEIN\*  
JEFFREY B. SAMUELS\*  
TERRY E. SCHIMEK\*  
KENNETH M. SCHNEIDER\*  
ROBERT B. SCHUMER\*  
JAMES H. SCHWAB\*  
MICHAEL J. SEGAL\*  
STEPHEN J. SHIMSHAK\*  
DAVID R. SICULAR\*  
MOSES SILVERMAN\*  
STEVEN SIMKIN\*  
MARILYN SOBEL\*  
AIDAN SYNNOTT\*  
ROBYN F. TARNOFSKY\*  
JUDITH R. THOYER\*  
DANIEL J. TOAL\*  
MARK A. UNDERBERG\*  
MARIA T. VULLO\*  
THEODORE V. WELLS, JR.  
STEVEN L. WOLFRAM\*  
LISA YANO\*  
JORDAN E. YARETT\*  
ALFRED D. YOUNGWOOD

\*NOT AN ACTIVE MEMBER OF THE DC BAR.

WRITER'S DIRECT DIAL NUMBER

202-223-7340

WRITER'S DIRECT FACSIMILE

202-223-7440

WRITER'S DIRECT E-MAIL ADDRESS

pspector@paulweiss.com

RECEIVED

MAR 31 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 31, 2004

By Hand

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, N.W.,  
Washington, DC 20554

Ex Parte Communication – Report No. SPB-196;

SAT-PDR-20020425-00071

Dear Ms. Dortch:

On March 30, 2004, Nancy Eskenazi, Vice President and Associate General Counsel of SES AMERICOM, Inc. (“SES AMERICOM”); Kimberly Baum, Manager, Satellite Market Development, SES AMERICOM; and the undersigned, attorney for SES AMERICOM, met in person with Jennifer Manner, Office of Commissioner Abernathy; Paul Margie, Office of Commissioner Copps; and Sam Feder, Office of Commissioner Martin, for the purpose of discussing matters identified in the

Received

APR 05 2004

Policy Branch  
International Bureau

attached document, which was distributed at the meeting. We are filing an original and one copy of this letter and the attachment in each of the referenced dockets.

Respectfully submitted,



Phillip L. Spector

Attorney for SES AMERICOM, Inc.

Attachment

cc (via e-mail, with attachment):

Jennifer Manner

Paul Margie

Sam Feder

Qualex International

**THE FCC SHOULD NOT INITIATE A RULEMAKING ON  
REDUCED ORBITAL SPACING OF DBS SATELLITES**

- **The FCC rules already provide an effective mechanism for evaluating proposals for satellites at reduced spacing.**
  - The DBS bands are internationally planned, and governed by Appendices 30 and 30A of the ITU Radio Regulations.
  - Appendices 30 and 30A contain procedures for modifying the “BSS Plans,” including to accommodate satellites at reduced orbital spacing. These procedures prescribe international coordination to protect existing systems.
  - The FCC rules incorporate these international procedures. Compliance with these rules is essentially the only technical qualification imposed by the FCC on DBS applicants. (*See* 47 C.F.R. §§ 25.111(c), 25.114(c)(22), 25.148(f).)
  - In its 2002 revision of the DBS rules, the FCC explicitly held that these procedures ensure adequate protection of existing systems, while permitting new entry. With reduced-spacing scenarios fully in mind, the FCC declined to adopt other technical constraints. (*2002 DBS Order*, ¶ 130.)
  
- **The FCC should continue to support the existing coordination procedures.**
  - The FCC has consistently followed the international procedures in licensing U.S. DBS satellites.
    - The modification procedures have been used for all U.S. DBS satellites in operation today.
    - The FCC itself has undertaken to modify the BSS Plans to introduce satellites at locations that were not assigned in the original BSS Plans, not only for service to the Americas, but also to Europe and Asia.
    - The FCC has required U.S. licensees to honor the ITU priority system.
    - The FCC is currently participating in a number of coordinations involving DBS satellites at reduced spacing, including SES AMERICOM’s proposed satellite at 105.5°.
  - Coordination will result in more DBS capacity than a rulemaking.
    - Coordination avoids imposing restrictive “one-size-fits-all” requirements. Technical rules cannot effectively take into account the differences in the sharing conditions at each individual DBS slot, and can preclude otherwise viable sharing arrangements.
    - Coordination allows the sharing arrangement between operators to evolve as requirements change, for example, as new satellites are launched. Formal rulemakings cannot keep up with such changes.
    - The acceptable range of values for many technical parameters (such as power levels) depends on the values of other system parameters. Rules of general applicability cannot take advantage of such flexibility.

- A satellite designed to meet a one-size-fits-all requirement in all operational scenarios will necessarily result in degraded capacity at some or all orbital slots, resulting in lost capacity to the consumer.
    - Innovations -- such as spot beams, higher order modulation and coding, and HDTV -- can be, and routinely are, taken into account in coordination.
    - All of these advantages of coordination have been exploited by U.S. DBS operators to date, to permit, for example, smaller dishes and spot-beam satellites.
  - Coordination has been used successfully for decades across many satellite bands. Even among potential competitors, agreements permitting new services have been developed in good faith. There is no reason why coordination will not function well in this case.
  - The FCC, via its participation in each coordination, and its ultimate responsibility for agreements reached, can fully pursue its policy objectives.
- **The FCC should reject EchoStar's proposal to tie the technical issues of reduced orbital spacing to the question of U.S. market entry by foreign-licensed satellites.**
    - The two issues are not linked in any logical way.
    - There is no reason to re-open issues resolved by adoption of the ECO-Sat test.
- **Initiation of a rulemaking conflicts with key FCC policy objectives that require increased DBS capacity in the near-term.**
    - The FCC has found that more competition is needed in multichannel video.
    - It has also encouraged DBS providers to offer more local-into-local and HDTV channels.
    - Authorization of new BSS satellites, consistent with ITU coordination procedures, will further these policy objectives within a two-year timeframe.
    - By contrast, a rulemaking will introduce more delay, in a process that has already been delayed unreasonably.
- **SES AMERICOM could have launched a BSS satellite for 105.5° WL in 2004.**
    - The SES AMERICOM Petition for Declaratory Ruling has been pending with the FCC for two years, despite the fact that the Petition complies with all FCC rules and policies and is ripe for grant.
    - When it filed this Petition in April 2002, SES AMERICOM indicated it could launch a new satellite, offering new DBS services, by 2004.
    - The FCC should focus on authorizing new services and promoting competition, resisting DirecTV's self-serving attempt to introduce additional delay.